

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3705 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order mJJJJJJ

5. Whether it is to be circulated to the Civil Judge? : NO  
Nos. 1 to 5 No

ARJAN GOVIND CHAIYA

## Versus

STATE OF GUJARAT

### Appearance:

MR BN RAVAL for Petitioners  
MR PK SHUKLA, AGP. for respondents no.4 & 5.

CORAM : MR. JUSTICE M. C. PATEL

Date of decision: 10/02/2000

## ORAL JUDGEMENT

This petition under Article 227 of the Constitution is directed against the judgment and order dated 18.11.1988 passed by the Gujarat Revenue Tribunal whereby the tribunal dismissed the Revision Application No.43 of 1984 filed by the petitioner and confirmed the order of the Deputy Collector in Civil Appeal No. 34 of 1984 and the order of the Mamlatdar & ALT, Bhachau dated 26.4.1983.

The proceedings under the Gujarat Agricultural Lands Ceiling Act,1960 were initiated by Mamlatdar, ALT, Bharuch and he passed the order on 26.4.1983 declaring that Govind Bhura was holding 50 Acres and 22 Gunthas as surplus land in village Ner Amarsar, Taluka Bhachau. Govind Vira had contended before the Mamlatdar & ALT that he had two major sons. He was given an opportunity to lead evidence but he did not produce ration card or any other evidence that the two sons were major as on 1.4.1976 and the Mamlatdar declared 50 acres and 22 gunthas of land as surplus. The appeal was dismissed by the Collector. The tribunal too has confirmed the findings recorded by the Mamlatdar and the Deputy Collector in the revision application.

The learned Counsel for the petitioner has contended that in fact the two sons were major. In support of his contention he relied on two certificates dated 23.4.1989 (Annexures "D" & "E" respectively) issued by Talati cum Mantri of the village stating that on verification Arjan Govind and Bhachan Govind were aged 37 and 32 respectively. However, it is not said on what basis this certificate is granted. Consequently such evidence produced for the first time in the present proceedings cannot be considered.

The learned Counsel for the petitioner then raised the alternative contention that the family of deceased Govind Vira consisted of himself, his wife and two sons and two daughters and hence they were entitled to benefit of section 6(3B) of the Act which reads as follows :

"6(3B) Where a family8 or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely :-

(i) minor son,

(ii) widow of a pre-deceased son,

(iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess five, so however that the total holding of the family does not exceed twice the ceiling area and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area; .....

In support of his contention he cited the decision of this Court in the case of Nathekhan Sajalkhan Bihari Vs. Mamlatdar, Vadgam and others reported in 25(2) GLR 1036. However, this plea was not raised before the Mamlatdar. The learned Counsel for the petitioner drew my attention to the submission which is noted in the judgment of the Collector in appeal to the effect that benefit of section 6(3)(B) had not been given. However, the plea was not raised before the Gujarat Revenue Tribunal. Moreover, there is nothing on record to show that Govind Vira had two daughters apart from two sons who he claimed before the Mamlatdar were major sons. Such plea which requires investigation of facts cannot be permitted to be raised for the first time in the petition under Article 227 of the Constitution. The findings recorded by the Mamlatdar, Deputy Collector and the Gujarat Revenue Tribunal are findings of facts based on appreciation of evidence and there is no error of law apparent on the face of the record which calls for interference under Article 227. There is no merit in any contention. The petition therefore fails and is accordingly dismissed. Rule discharged. No costs.

---

m.m.bhatt